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## ***Noteworthy***

"If we're going to set a precedent that those communications between someone who works for the president and the president of the United States are some day going to be made public, I think it could have a real chilling effect on the kind of candor in communications that people would have with the president."

**Senator McCain, This Week, 7/24/05**

"It appears to me that Judge Roberts is going to convince everybody when the day is done that not only is he probably one of the best qualified nominees to ever come down the pike, that he's a person of integrity and a person who will be fair-minded and open-minded about these issues, and that he'll take these cases, not as opportunities to come out with some broad social policy, but as opportunities to decide the litigation before him based on the facts and the law that is before him . . . In terms of asking these judges, sitting judges, prospective judges' opinions, that's not appropriate . . . that's been the position taken by both Democratic and Republican nominees in times past before the committee. Judge Roberts will fit right in the tradition of other nominees that have successfully passed and gotten, you know, 95, 96 votes out of the Congress, by taking the position that I've just said."

**Fmr. Senator Thompson, Meet the Press 7/24/05**

"There is not a set rule that says we must have this, this or this or we can't vote for him. This is not, and let me emphasize that, this is not a game of "gotcha" and document requests and general information requests are not an end, you know, a goal to prove something. They're a means to simply determining Justice Roberts' judicial views. That's all we want. So I can't tell you we need this document or that document."

**Senator Schumer, Fox News Sunday, 7/24/05**

"I hope my colleagues, like Senator Schumer, who sounds like he's being very restrained in his approach today, resist the pressure from outside liberal special interest groups who said really they have a three-pronged strategy to defeat the nomination. One is to claim

there wasn't adequate consultation. Two, to paint the nominee as extreme. And, third, to make unreasonable demands for documents which lawyers call fishing expeditions. And I understand Senator Kerry, for one, has already made a comprehensive request in setting up potentially the gamesmanship we saw with Miguel Estrada and even to some extent in John Bolton in a game of "gotcha." Now, I hope my colleagues on the other side of the aisle resist that kind of pressure from the liberal interest groups and we have an orderly, dignified hearing and an up-or-down vote on the senate floor."

**Senator Cornyn, Fox News Sunday, 7/24/05**

"The extent of research I and others have done who teach this issue [is this:] a Senator is allowed to ask anything he or she wants and the nominee is allowed to decline or answer anything in any way they want."

**Senator Joe Biden, Face the Nation 7/24/05**

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### **Judge Roberts's Record**

Washington Post

Monday, July 25, 2005; A18

THE TENURE OF John G. Roberts Jr. as a judge has been brief and not terribly illuminating about what his work would be like as a member of the Supreme Court. Democrats can thank their own obstructionism for this lack of clarity. Judge Roberts was first nominated to the U.S. Court of Appeals for the D.C. Circuit by George H.W. Bush, but his nomination was stalled and then killed by Democrats when President Bill Clinton took office. Instead of spending a decade amassing a record that liberals could now examine, Judge Roberts worked as an appellate lawyer. The brief period he has spent on the court of appeals since the current President Bush revived his nomination offers little grounds for judgment about what sort of justice he would be.

It has, to be sure, provided few opportunities for radicalism. The D.C. Circuit is among the more collegial federal appellate courts in the nation. Despite a broad political spectrum among its judges, dissents are rare. Its judges generally work far harder than do the justices to achieve consensus. Judge Roberts has been in no sense an outlier. He has neither dissented much nor provoked much dissent, and where he and other judges have disagreed, there have generally not been substantial ideological overtones to that disagreement. According to one analysis of his voting record, he has agreed with Judge David Tatel -- perhaps the court's most liberal member -- 94 percent of the time. This reflects both the relatively apolitical nature of much of the court's caseload and the fact that Judge Roberts -- and, for that matter, Judge Tatel -- is appropriately sublimating his political views to apply the law.

Nor do the decisions for which he has been criticized, in general, raise concerns. Yes, Judge Roberts was a member of a recent panel that unanimously overturned an earlier district court opinion stopping the military tribunals at Guantanamo Bay; but the district court opinion had serious flaws, and the circuit court ruling was hardly a surprise. Judge

Roberts, in addition, wrote for a unanimous panel that rejected a civil rights claim on behalf of a 12-year-old girl arrested for eating a french fry in the Metro system. The incident was outrageous, but the legal claim in response was weak.

Finally, Judge Roberts has been criticized for his vote to throw out a lawsuit by former American prisoners of war against the government of Iraq. This criticism is most unfair. The decision to dismiss the case was a unanimous one in which Judges Tatel and Harry Edwards joined; Judge Roberts disagreed with them only about the reason for dismissing the case, and his rationale is perfectly respectable. In general, Judge Roberts's work on the court has been elegantly crafted, legally precise and of very high quality.

There is really only one opinion Judge Roberts has written that potentially signals anything of serious concern, and that is the first one he wrote while on the court. The opinion is troubling because it suggests a too-narrow view of Congress's power to regulate interstate commerce -- the constitutional backbone of the modern regulatory state. Judge Roberts questioned whether the commerce clause of the Constitution is broad enough to permit the federal government to protect an endangered species that lives within a single state. But it would be a mistake to read too much into this opinion. Because of the procedural position of the case, Judge Roberts merely sketched his concerns and was careful not to pass judgment on the merits of the matter. The decision may be suggestive, but it hardly commits him to a particular philosophy as a justice in this important area.

Judge Roberts's work as a judge is too brief to recommend him especially highly as a justice; his main qualification is his long and excellent career as a practitioner. But neither will mining it yield anything disparaging. His two years on the D.C. Circuit have been a credit to it.

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### **Kennedy on Roberts**

Editorial, Wall Street Journal

July 25, 2005

In his two years on the appeals bench, Supreme Court nominee John Roberts has authored about 40 opinions, but it's a one-and-a-half page dissent that has Ted Kennedy fulminating. The Senator from Massachusetts is outraged about a Commerce Clause case called *Rancho Viejo v. Norton*, which, in the Kennedy legal interpretation, threatens "Social Security, Medicare, the minimum wage" and the environment. Is that all?

In *Rancho Viejo*, a real-estate company challenged the Interior Department's application of the Endangered Species Act to halt a project that might disturb an endangered species known as the arroyo Southwestern toad, whose picture we publish nearby. At issue was Congress's power to regulate interstate commerce -- in this case, the movement of the toad, which, as Judge Roberts pointed out, is entirely intrastate. The toad is a homebody; it does not travel out of California.

It's a long hop from the arroyo toad to Social Security or the minimum wage, and we confess to some difficulty in following Senator Kennedy's line of reasoning. Nor do we agree that the interpretation of the Commerce Clause is "settled," as he asserts. If anything, the Supreme Court confused matters in the past term.

Judge Roberts said that federal regulation of the toad appeared to be "inconsistent" with *Lopez*, the 1995 case in which the Supreme Court ruled that gun possession near a school did not constitute economic activity. But he was writing in 2003 -- before last term's controversial *Raich* decision, in which a 6-3 Court seemed to retreat from *Lopez* in saying that federal law can trump state laws permitting the possession of marijuana for medical use.

Also worth noting is that Judge Roberts's four-paragraph dissent was not a full-fledged opinion on the merits of *Rancho Viejo*; he was merely disagreeing with the majority's decision to deny a review of the case by the full court. This makes Mr. Kennedy's denunciation of the "sweeping implications" of Judge Roberts's words even more dishonest.

One final quote from Mr. Kennedy on Judge Roberts: "I can imagine few things worse for our seniors, for the disabled, for workers and for families than to place someone on the highest court in the land who would put these protections at risk."

Barring surprises, the debate over Judge Roberts's confirmation is widely expected not to be rancorous. But judging from Senator Kennedy's opening salvo, it won't be because he wants it that way.

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### **Roberts blends low-key style, high ambition**

**Christian Science Monitor, 7/25/05**

By Peter Grier

WASHINGTON - The story of John G. Roberts Jr., as told by those who know him, is the chronicle of a Supreme Court nominee foretold.

Looking back on it now, it's obvious that a president someday would pick Judge Roberts to sit on the highest court in the land, say his friends and associates. He was the smartest kid in high school, but never overbearing; at Harvard, he ran the Law Review with a craftsman's touch.

He's remembered as funny, a hard worker, intensely analytical. He's even got a high-court-ready hobby. His friend and mentor Chief Justice William Rehnquist is famously fond of the English comic operas of Gilbert and Sullivan; Judge Roberts loves uber-Brit author P.G. Wodehouse, progenitor of Jeeves.

"With hindsight, it just seems perfect," says law school chum Charles Davidow, who's traded Wodehouse books with Roberts for years. "He is exactly what you would look for in someone going on to be on the Supreme Court."

In this inevitability he is different from the man who picked him to replace retiring Justice Sandra Day O'Connor. President Bush, by all accounts, drifted along until early adulthood, focused on his next party as much as the next step in his career. Even Vice President Cheney dropped out of Yale at one point, before beginning his rise to the top of the Republican establishment.

John Roberts never dropped out of any school to find himself. To the contrary, he appears to have been the most driven - if not the best - student in every school he was ever in.

And now he's preparing for the most important oral exam of his life: confirmation hearings. Judge Roberts spent last week in characteristic groundwork, meeting privately with Republican and Democratic members of the Senate Judiciary Committee. Controversy may yet erupt over his nomination, but to this point it appears that the much-predicted battle over President Bush's first nomination to the Supreme Court is a fizzle.

A new Washington Post/ABC poll found 59 percent of respondents in favor of Roberts's confirmation, and just 23 percent opposed.

"The process is off to a good start," said President Bush in his weekly radio address. A quiet corner of America

John Glover Roberts Jr. was born in Buffalo, N.Y., on January 27, 1955. But his formative years were spent in Long Beach, Ind., a beautiful and affluent community on the Lake Michigan shore.

Developed in the 1920s, Long Beach was one of the first towns anywhere to be built around a golf course. Its town hall and first public grade school were designed by John Lloyd Wright, Frank Lloyd Wright's son. Beachfront homes today sell for \$1 million and up.

Roberts' father, John Roberts Sr., was a top executive at a new Bethlehem Steel plant in nearby Burns Harbor. John Jr. attended Notre Dame School. By all accounts it was a comfortable childhood in a corner of America that remained unroiled by the turmoil of the era.

"Things were different back then. You told the kids 'don't do this' and they didn't," says Teddy Liddell, who was principal of Notre Dame School in the 1960s.

In this environment the young John Roberts thrived.

He was "an outstanding student, but very quiet, low-key, never lorded his intelligence over others," says Mrs. Liddell.

After Notre Dame, John moved on to La Lumiere, a nearby independent Catholic boarding school named for the former owners of the bucolic wooded land on which it was built. Only a few years old at the time Roberts attended, La Lumiere had been founded by a group of Chicago-area and Indiana business executives. Courses included "great books," and, for seniors, "moral choices."

The young Roberts participated in virtually every activity of the small school, from athletics to student government to the newspaper and the drama club. Girls considered him a "hunk", says Joan Langley, a teacher whose own children attended school with the Roberts kids.

The Roberts and Langley families belonged to Sand Creek Club in nearby Chesterton, which was owned by Bethlehem Steel and had a pool, golf course, and tennis courts. But in the summer John Roberts, like most of his contemporaries, worked. "The boys had down and dirty jobs in the mill, but the pay was good and it gave them some spending money," says Joan Langley.

John Roberts Jr. graduated in the fifth class to exit La Lumiere, and headed off to Harvard. His parents remained in the area until the mid-1980s, when his father was named general manager of the Bethlehem Steel plant in Johnstown, Pa.

Today the son is a local legend. That might have been the case even if he had not been tapped for the Supreme Court. "Everybody remembers John Roberts," says David Langley, a retired Bethlehem executive and John Langley's husband. "He was just smarter than everybody else."

Law school wunderkind

The future nominee cut the same sort of swath through Cambridge, Mass. Fellow students from his Harvard years remember him as a person who was well-liked, though not gregarious; a hard worker, though never showy; and stand-out intelligent in an environment where the criteria to measure that is quite high.

Former colleagues remember him as a rare person who was both persuasive and persuadable. In a word, he was ... judicious. It's almost as if he were wearing black robes at age 21.

"He almost enjoyed it when you persuaded him that he was wrong," says Bill Kayatta, who met Roberts in their first year of law school. "A lot of people are not like that. They will look like they just lost a tennis match."

Roberts entered Harvard Law School in the fall of 1976. Eventually he won the post of managing editor of the Harvard Law Review - the person charged with making the editorial train run on time.

In that position Roberts wrote little himself, but dealt with the writings of others. He worked long hours, as did all masthead editors on the staff.

Stephen Galebach met Roberts on the first day of their law review careers, in the stuffy stacks of a library without air conditioning. He says the fact that Roberts thrived in the craftsman-like job of managing editor shows how nonpartisan he is. "He had no strong drive to stamp the law review with his particular views," says Mr. Galebach.

Roberts graduated from Harvard Law in 1979. A succession of fast-track positions quickly followed. From 1979 to 1980 he was a law clerk for Judge Henry Friendly for the 2nd US Circuit Court of Appeals. Next he was a clerk for then-associate Supreme Court justice William Rehnquist. After a quick stint in the Justice Department he served four years, 1982 to 1986, in President Reagan's Office of the White House Counsel. Then he entered the lucrative world of Washington private legal practice at a top firm.

In January 1992 the first President Bush nominated him for a federal judgeship on the D.C. Circuit Court of Appeals. But then followed what could have been a crushing career blow, in that the Democratic-controlled Senate did not take up his nomination prior to that fall's election, and Bill Clinton's victory.

Roberts would have been one of the youngest federal appeals judges ever, says Richard Lazarus, a Georgetown University law professor and friend from Harvard Law days. But he did not let the disappointment wear him down. He spent the next decade developing himself into one of the most skilled members of the Supreme Court bar, arguing dozens of cases before the high court. He married, and adopted two children.

"He took what could have been a depressing and disappointing time, and made himself much more full, professionally and personally," says Professor Lazarus.

On Jan. 7, 2003, another President Bush nominated him - once again for the D.C. Circuit Court of Appeals. This time the Senate confirmed him in four months.

Now his short record of opinions and his lengthier record of work in the Reagan administration are undergoing intense scrutiny by Republicans and Democrats alike. Some legal or ideological controversy may yet emerge. But people from his past say a personal controversy is unlikely in the extreme.

The Rev. Michael C. McFarland is president of the College of the Holy Cross in Worcester, Mass., alma mater of Roberts' wife, Jane. The Robertses "pretty much are what they appear," he says. "Everyone's probing around for some new threat they can pull out. But they're both really genuine people."